IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16210 of 2003

with

SPECIAL CIVIL APPLICATION No 16211 & 16212 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PORBANDAR COMMERCIAL COOP. BANK LTD.

Versus

CHAM EXPORTS

Appearance:

1. Special Civil Application No. 16210 of 2003
   MR YN RAVANI for Petitioner No. 1
   NOTICE SERVED BY DS for Respondent No. 1
   MR YOGESH S LAKHANI for Respondent No. 1/A-7
2. Special Civil Application No. 16211 & 16212 of 2003
   MR YN RAVANI for Petitioner No. 1
   NOTICE SERVED BY DS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 19/08/2004

ORAL JUDGEMENT

Heard Mr.Ravani for the petitioners as well as Mr.Jani for respondents for final disposal.

2. The short facts of the case are that the petitioner filed three suits against the concerned respondent-firm, and there is no dispute on the point that the total amount as per suit claim in all the three suits is around Rs.93 lacs. The said suits were filed as summary suits. The Ld.Nominee passed order on 2.4.2002 granting leave to defend on condition to deposit 15% of the amount of suit claim. The respondents herein preferred Revision Application Nos 111, 112 and 113/02 before the Gujarat State Coop.Tribunal, and the Ld.Tribunal has allowed the revision applications by directing the suits to be disposed of within a period of two month, and it is under these circumstances the petitioner-bank has approached this court.

3. Upon hearing the learned counsel for the parties, it appears that there is no dispute on the point that the suits are filed and the total amount involved in the suits is around Rs.93 lacs. As per the provisions of Sec.99 of Gujarat Coop.Societies Act (hereinafter referred to as "the Act") while considering the matter for granting leave to defend the Nominee has power to impose condition of depositing of amount upto 33%. It is not the defence of the respondents herein, who is defendant in the suits, that neither the loan is not taken nor it is the defence that the documents are not executed. The only defence raised is that because of difficulties in the business unconditional leave to be granted and another defence taken is that the amount of the bank is sufficiently secured by the property which is mortgaged in favour of the bank. It is the case of the petitioner Bank that the cheques were issued for payment and they are dishonoured. It further appears that together with the institution of suits interim applications were also preferred seeking injunction against the property in question and for attachment of the stock in trade. The interim injunction has been granted by the Ld.Nominee and the attachment orders were also passed. Respondents have carried the matter before the tribunal and the same is pending. Mr.Jani, Ld.advocate for respondents submitted that the respondents are ready to deposit 70% of the amount of

stock and he further submitted that the suit amount of the bank is sufficiently protected and therefore the order passed by the tribunal does not call for interference.

4. The perusal of the order passed by the tribunal shows that the interference is made by the tribunal with the order passed by the Ld.Nominee on the ground that 70% of the amount of the attached stock is to be realised and the injunction against the property is also there which is sufficient to cover up the suit claim in addition to the order of attachment. There is apparent error committed by the tribunal while exercising the revisional jurisdiction in considering the matter for imposing condition for leave to defend. The relevant consideration for the purpose of imposing condition for leave to defend would be as to whether the defence is genuine and, if accepted, may result into disallowing the claim of the bank. Even if the defence is considered, as recorded by the Ld.Nominee, it can not be said that the imposition of condition of depositing of 15% was, in any manner, unreasonable or was not warranted as per section 99 of the Act. The tribunal has misdirected itself on the aspects that there is an order for attachment and 70% of the amount is to be realised. The tribunal has also misdirected itself on the aspect that the suit claim is secured by the immovable property. If such considerations are accepted while granting leave to defend and/or while imposing conditions, the conclusion would be that the very purpose of summary trial in the suit proceedings before the Ld.Nominee would be frustrated. If it is found by the Ld.Nominee that the defence is sham and bogus no leave to defend deserves to be granted. If he finds that there is a case for granting leave to defend while imposing conditions considering the facts and circumstances of the case, it is open for him to quantify the percentage which may be directed to be deposited subject to the limit as provided by the statute. If the aforesaid conditions are taken into account, it can not be said that the order passed by the Ld.Nominee is illegal or there were any cogent circumstances warranting the interference by the tribunal. If the grounds germane for exercising power of granting leave to defend are taken into consideration, there was hardly any scope for interference by the tribunal.

6. In view of the above, the impugned order passed by the tribunal in all the revision applications deserve to be quashed and set aside and are hereby quashed and

set aside. As a consequence of the same, the respondents will be required to deposit 15% of the suit claim if they are desirous to take the benefit of leave to defend. Mr.Jani, Ld.advocate for respondents submitted that some time may be given to the respondents to deposit 15% of the amount and he prayed for three months time. Considering the facts and circumstances, the respondents shall be at liberty to deposit the 7.5% of the said amount within a period of 6 weeks from today and the further 7.5% of the amount within a period of six weeks thereafter.

7. Petitions are partly allowed. Rule is made absolute accordingly to the aforesaid extent. Considering the facts and circumstances, there shall be no costs.

19.8.04 (JAYANT PATEL,J)